7: Hailey G-4 (No date) 1950 FL12 Masai FL12

634 [623] was further complicated by the fact that at stated intervals, normally about 15 years, power passed from the hands of the representatives of one Age Group in each Section into those of the succeeding Age Group, there being thus an alternation of authority in each Section between the Right Hand and Left Hand Groups.

642 To quote Sir Charles Eliot again, the consequence of the traditional structure of Masai society was that "the centre of political gravity was not with the elders or chiefs, but with a republic of young men, governed by ideas of military comradeship. The chiefs arranged the details of any raids which [622] the young men wished to undertake, but their power of compelling them to do anything which they did not wish was very slight." The nearest approach •691 to a central and superior authority was to be found in the Chief Medicine-Man 642 (Laibon), though his authority was based mainly on the discharge of his magical functions.[1] The medicine-men were divided into three grades, of which the first grade was represented by the person of the Laibon, the Chief Medicine-Man of the tribe, and his guidance was held to be of the first importance in any major operation which the tribe might undertake.

THE INTRODUCTION OF THE NATIVE AUTHORITY SYSTEM

175 It is unnecessary to dwell here on the circumstances which for a prolonged 648 period made the Masai a standing menace to the peace of their neighbours. The tribe seems to have reached the height of its power between 1800 and 1850, when it overran Kenya and part of Tanganyika.[2] There were subsequently severe internal dissensions among the Masai, which resulted in two of their five "divisions" being practically destroyed and there was also great mortality as a result of the outbreak of rinderpest and smallpox in the 'eighties of last century. But even though their strength was much reduced, their predatory habits continued to be a matter of grave concern in the early days of the Colony, and seemed in particular to threaten the progress of European settlement. Among the Masai themselves strong feelings were aroused by the measures, taken largely in the interest of European settlers, designed to counteract the propensity of the tribesmen to roam widely in search of fresh grazing grounds, as the result of which they were restricted to a Northern Reserve (Laikipia) and a Southern Reserve, separated from the Northern Reserve by a broad belt of country occupied by European farms. That was the position at the time of the Masai Agreement of 1904, but it subsequently became the policy of the Kenya Government to move the tribesmen in the Northern Reserve into the Southern Reserve, which was to be largely augmented in area for this purpose.[3]

175 In view of the terms of the Agreement of 1904, the assent of the Masai was 648 required for this transfer, and the operation was one of obvious difficulty. In 791 the circumstances it was not unnatural that the Government should have availed itself of the influence exercised by the Chief Medicine-Man, the Laibon Lenana. He had inherited from his father, Mbatian, who died in 1890, a position which commanded general respect, and he himself took a leading position on behalf of the tribe in the discussions which led up to the Agreement of 1904, which he signed as "Chief Laibon." He was subsequently recognized

[1] The word laibon appears to be a Europeanized form of the Masai word Ol'oiboni (A. C. Hollis, The Nandi, 1909, page 49.

[2] Land Commission Report Vol. II para. 203.

[3] The Laikipia Reserve, contained 4,500 square miles. An addition of 6,500 square miles was to be made to the Southern Reserve.

7: Mailey G-4 (No date) 1950 FL12 Masai FL12

THE ORGANIZATION OF THE NATIVE TRIBUNALS

692 As regards the administration of native justice, reference has been made above to the introduction of the system of Native Tribunals in 1918. It became obvious that these Tribunals were not generally recognized by the Masai, who preferred that such issues as arose between them should be settled in the customary manner by the Headmen or Elders. At present there are only two regularly constituted Tribunals in the Narok and two in the Kajiado District, with an Appeal Tribunal in each district.[1] Three of these Tribunals consist of a permanent salaried President and three salaried Tribunal Elders, taken from a panel of eight to twelve Elders; in Ngong the Tribunal has five Elders. The Tribunal Elders represent different tribal Sections and are nominated by the District Commissioner after consultation with the Headmen and tribesmen. There are still a few Chiefs on the Tribunals, but in accordance with the policy followed elsewhere in Kenya, these are now being removed. There is in addition a loosely constituted Tribunal in the Loita with a President and an indefinite number of members, but they only hear a small number of cases a year.

Two of the Presidents receive salaries of 50s. and 25s. a month; the others [465] a sitting fee of 10s. a day. In two Tribunals the Elders receive 40s. a month and 18s. a month; in the others they receive a sitting fee of 5s. a day. The Appeal Tribunals are composed of members of the Local Native Authority Councils detailed at each sitting of the Council to hear such Appeals as are pending, an unusual but apparently a satisfactory arrangement.

691● The preference for referring cases to the arbitration of local headmen or 692 elders persists, and the civil issues which come before the regular Tribunals are few in number and refer mainly to matrimonial issues. In 1946, for example, the Native Tribunals dealt only with the following cases:—

	Number of Original Cases	Appeals to Native Appeal Tribunals	Appeals to District Commissioners	Appeals to Provincial Commissioner
Civil	163	20	6	3
Criminal ..	95	Not Available	..	..

These figures exclude, however, the large number of cases referring to breaches of the Poll Tax Ordinance, which in Narok alone were over 500 in 1946 and over 1,500 in 1945.

695 Judging only from such figures as are available for the appeals to Administrative Officers, the decisions of the Tribunals appear to have been generally accepted, but it is difficult to arrive at any judgment on the matter in view of the restricted field of civil issues or of true criminal issues which have come before the Tribunals. In paragraph 417 of his study of the Kenya Native Tribunals Mr. A. Phillips has called attention to the necessity for a close supervision over the exercise of criminal jurisdiction by Tribunals such as these, which are still at such a rudimentary stage of development, and he further points out that in civil issues this is in particular necessary in order to prevent

[1] These details differ from those given at page 141 of the Report on Kenya Native Tribunals, A. Phillips, 1945.